GRS IX 5]

Previous references. Mwg 266-22-1-8

1924 (Mwgrai)

File No. 36 24

Serial Nos. 1 - 2

Later references Mwg 172-22-1-5

GENERAL AND REVENUE SECRETARIAT

Serial Nos. 2

Part B for August 1924

SUBJECT

Reports in the matter of the conflict between Sec 14 of the Mwg Regn with the terms of the Ch Com^rs Notification of 1877 that the time has arrived to legislate in the matter & solicits instruction in the matter.

NR 359 dated 30.8.24 To the Mwg Com^r

Necessary action will be taken in connection with the new Mwgrai Bill which is under the consideration of Govt

A1850

Muz 1] 1924

MUZRAI SECRETARIAT.

(Muz.)

NOTES

File No. 26/1922

FILE HEADING

Application of the chief Comr's. Notification of 1847 in the matter of the resumption of alienated Devadaya lands.

From The Muzrai Comr.

C No 161 Dated 15/7/22. Received 18/7/22

Diary No.	Enclos	Spare Copies.	Serial No
24	1 & 2		1

BRIEF ABSTRACT OF LETTER.

Reports in the matter of the conflict between sec. 14 of the Muz. Reg?n with the terms of the Ch. Comr's. Notification of 1847, that the time has arrived to legislate in the matter

NOTES AND ORDERS

bringing out the intention of Govt that the Notification of 1847 has to prevail in such cases. and Solicits instructions in the matter.

The Muz. Comr's. letter explains fully the facts of the case

NOTES--First Sheet

WD 0560—GPP—500—9-22

III.2]

Muzrai Secretariat | Muz. File No. 31 of 192 4

Serial No.

The file relating to the amendment of the Muz. Regn wherein provision is made, is in the legislative section.

The matter was discussed in the Birthday Session of the R.B. meeting of 1924.

Submitted for orders.

The record now received relate to Mr Srinivasa Iyer's case.

AG
23-8-24.

Where is the draft letter of 11th Jan 1923?

28.8.24

Muz. Collection - I. No. 266-22-6

Submitted (vide Flag E)

AG 28/8/24 28/8/24

You should have done this before submitting the file

This Section pertains to the Endowments file in which the Collection was always dealt with. It was separated from this file by the Secy & recd from him.

29/8/24

Action has already been taken in the Legislative Section to effecting the necessary

NOTE—Contd. on sheet

Serial No

amendment. The present case may be sent back when the amendment is effected.

28.8.24.

664/28 8 2nd member

A reply may be sent to the Commissioner's letter stating that action will be taken in the matter in connection with the new Endowments Bill when it comes before the Legislature?

29.8.24

29.8.24

Dft. Submitted.

30.8.24.

Issue

30.8.24

2 To the Muzrai Commissioner. No. 35 Jaya. 1.28

With Ref. to your letter No. [illegible]

The matter in connection with the Madras Hindu Religious Endowments Bill which is [illegible]

WD 0561-GPB-3750—1 9 22

No. C.161 of 24-25 Office of the Muzrai Commissioner in Mysore.

Dr. two cases file

Dated Bangalore, 13th August 1924.

From

K. Chandy, Esquire., B.A.,

9734 Muzrai Commissioner in Mysore,

Bangalore.

To

K. V. Anantaraman, Esquire., B.A.,

Secretary to the Government of Muz. 31-24-1.

His Highness the Maharaja of Mysore,

Revenue Department.

Sir

E (Muz. 266-22) (57) With reference to your letter No.2033/Muz.266-22-3 dated 11th - January 1923 (Confidential) issuing instructions to Muzrai Officers for guidance in cases of conflict between Section 14 of the Muzrai Regulation with the terms of the Chief Commissioner's notification of 1877 about -- the resumption of alienated Devadaya Inam lands, I have the honor to -- forward herewith copies of letter No.C.174/20-21 dated the 28th July -- 1924 and of its enclosure received from the Deputy Commissioner, Mysore District, soliciting instructions as to how the question of resumption of the alienated Inam lands S.No.320 and 317 belonging to Sri Narasimhaswami temple at Maddur should be disposed of.

2. The Public Prosecutor who was consulted in the matter has discussed the subject in detail in his letter No.396 of 23-24 dated 20th June 1924 and is of opinion that Government cannot legally dispossess the tenants and that the only way of claiming increased rental is by conforming to the provisions of Sec.86 Land Revenue Code.

3. On receipt of your letter under reference (para 1 above) the --- Deputy Commissioners were requested to take action under the Chief Commissioner's notification in such cases. In the present case, however, since the Public Prosecutor (who is the legal adviser of the Deputy Commissioner) is emphatic about the nonapplicability of the Chief Commissioner's notification (probably in view of some cases recently decided in the District Judge's Court Mysore,) I beg to state that the time has -- arrived for Government to legislate in the matter, bringing out -----

out clearly the expressed intention of Government that the Notification of 1877 has to prevail in such cases. (vide orders of Government in many decided cases.).

4. If further arguments are considered necessary for specially -- treating the Muzrai Institution as exempt from the principle of 12 -- years adverse possession contained in Sec.14 of the Muzrai Regulation, I may mention the following:- (1) "Adverse possession" is often so easy to prove owing to local feeling and to the absence of methodical management of many institutions, (2) It cannot be said that a temple or other public or charitable institution (specially if it is a small one) is always as wideawake and responsive to the attitude of its tenants or lessees as an average superior holder (not being a corporation) can be reasonably expected to be regarding his own interests; (3) The conditions of enhancement laid down in Sec.86 of Land Revenue Code are too confined, e.g. the limits of survey assessment, of new cesses --- imposed by Government, and of additional value imparted to the land by works executed by Government or superior holder and do not allow of - reasonable enhancement owing to prevalence of general conditions such as rise in prices, vicinity of town or prosperous neighbourhood, better communications, healthy competition among agriculturists etc; (4) A reasonable assurance to the lessee or tenant about continuance of lease or term is compatible with a reasonable expectation of enhancement of rental to the institution; and (5) Religious and charitable institutions most of which depend as things stand, specially the smaller ones, almost wholly on the income from lands, deserve a set of rules framed in a spirit favourable to them while Sec.86 of the Land Revenue Code is intended for the benefit of tenants.

5. In these circumstances, I beg to suggest that the question may be examined fully in all its aspects and needful legislation undertaken in conformity with the principles which have guided the policy of Government all along when dealing with such matters.

6. Pending the consideration of the general question, the action to be

taken

in the particular case now brought to notice, may be ordered to -- lie over. As the subject is a very important one from the point of -- view of the institutions and devotees, I beg that needful action as suggested above may very kindly be taken at an early date.

The entire records received with the Deputy Commissioner's letter referred to above are herewith submitted for perusal and kind return.

I have the honor to be,

Sir,

Your most obedient servant,

KSR.

Muzrai Commissioner.

Letter No.A.C.174/20-21 dated 25/26th July 1924 from the Deputy Commissioner, Mysore District, to the Muzrai Commissioner in Mysore.

"With reference to your letter No.C.1092/22-23 dated 17/19th May 1924 re the alienation of S.No.320 and 317 of Maddur village, belonging to the Sri Narasimhaswami temple at the place, I have the honor to state that a reference had been made to the Public Prosecutor, Mysore, calling for his legal opinion, whether under the circumstances, steps may not be taken for the resumption or dispossession of the lands in question, from the present alienees, under clause F para ii of Chief Commissioner's Notification No.266 of 17th November 1877. In reply, he states that we cannot legally dispossess the tenants under the above authority for reasons stated in his letter No.396/23-24 dated 20th June 1924, a copy of which is enclosed for favour of perusal.

In these circumstances, and in the state of affairs explained in my letter No.C.174/20-21 dated 7/10th November 1923, I solicit the favour of instructions as to how this question should be disposed of. The entire

entire file of the connected vernacular records is enclosed for reference.

"Copy"

For Muzrai Commissioner. 13/10/24.

KSR.

Letter No.396 of 23-24 dated 20th day of June 1924 from the Public Prosecutor, Mysore Division, Mysore, to the Deputy Commissioner, Mysore District, Mysore.

"In answer to your requisition dated 7-6-24 No.174/20-21 Muzroy, I have the honor to request you to over look the delay, as I had not the leisure and the time to study the vernacular records sent and to submit to you, earlier than now, my views regarding the propriety or otherwise of resuming possession of the Devadaya lands Nos.317 & 320 endowed to the Sri Narasimhaswamy temple at Maddur as per the notification of cl:6 of 1877.

From a perusal of the records the under noted facts are disclosed.

(1) That survey No.317 measuring 3 acres and 27 guntas is a Devadaya Inam, Out of this 2 acres and 7 guntas of land are being enjoyed from - 1846 by one Channi Gowda, 30 guntas by Sadasivaiya and 30 guntas by one Mahomed Ismail.

(2) That survey No.320 measuring 2 acres and 20 guntas is also a devadaya Inam, out of this 2 acres and 13 guntas are in the possession of Channi - gowda and 7 guntas are enjoyed by Nanjappa.

(3) The consideration for the above being an annual payment of each -- both to the temple and Sircar.

(4) That the said payment is fixed, thus from the above, it is contended by the tenants that they are kadim tenants under section 84 of the Land Revenue Code. Regulation 1v of 1888, and that they are not liable to be dispossessed at the pleasure of the land lord.

(5) Further, the tenants urge that their superior holder can only -- enhance the rental, in consonance with the previsions of section 86 of the said code. Now my view regarding the propriety or other wise of falling back upon the provision of cl.6 of notification No.266 dated 17-11-1877 for exercising the right to resume the Inam lands, is briefly stated as hereunder:--

That the notification of 1877 has the force of law cannot be denied, But Regulation 1v of 1913 viz.the Mysore Muzrai Regulation which came into force on thelst day of January 1914, is at present, the law that has to be applied for resuming Inam lands wrongfully alienated. Proviso to Sec. 14 of the Muzrai Regulation lays down in clear language that the period - within which such an alienation or wrongful continuance of possession

possession could be put an end to , is only 12 years.. It is hardly necessary to shew that unwillingly the longer period of 50 years allowed by the notification is cut down to 12 years by the Muzrai Regulation While dealing with the subject though it cannot be overlooked that the numbers of the select committee in their report, say that the then existing or unrepeated notification issued by the Chief Commissioner remain unalterred or uneffected, yet it is unfortunate that no such - provision is inserted in the Regulation itself.

In the absence of such an enactment, and in the existence of two distinct provisions, incompatible with each other, regarding the same subject matter, the presumption of law is that the later enactment -- repeals the old by implication. So in spite of the fact that as -- per the terms of treaty with the Imperial Government, no law or ----- notification having the force of law, issued by the Chief Commissioner or Imperial Government, could be repealedor modified except with the express sanction of the Imperial Government, and though such sanction has evidently not been obtained for the departure from the old law, yet our courts of Law are legally bound to obey the provisions of our --- statute and act in accordance therewith. It is certainly not open to our courts to question our sovereigns acts or legislative measures.. They have to apply the law as it is though it be in virbatum of a -- notification, and it would be beyond their province to question the - legality, propriety or enforcibility of our own legislation. Thus as per my view of the law, I am afraid the only law that can be legally applied is the Mysore Muzrai Regulation, and that the notification of 1877 has no place here. As per proviso the section 149 12 years is the period of time fixed for questioning an alienation, or wrongful - continuance of possession. There seems to be reliable evidence that as for back as 1846, the original tenant Chenre Gowda was put in --- possession of these lands as Kadim tenant. In XXVIII M.C.C.R.199, (muktesar Nanjiah Heggade V.S. Subba Bhatta and 2 others), it is ruled that in the case of temple lands leased out by the trustees of the temple the presumption is against the existence of a permanent tenancy, and the burden of proving such a tenancy is upon those who allege its exister But in the case on hand, we have to admit that the tenants are paying a fixed rental from 1846. Ofcourse it is open to us to urge that the --- Amildar in 1846, exceeded the limit of his authority or

disregard of future economic changes or conditions, by granting a kadim tenancy and that it is still open to the present manager or trustee of the temple, to take exception to the aforesaid act vide the Privy council ---- decision in 45 Madras, but at the same time, it cannot be denied that ---- Government continued to receive a fixed rental from successive holders without protest and thus for a considerable numbers of years. Thus, very good materials are afforded to strengthen the contention of the tenants that the nature of their tenancy is kadim, and that their position as -- kadim tenants is unassailable under the proviso to section 14 of the --- Muzrai Regulation. Under the circumstances above detailed, I am of --- opinion that we cannot legally dispossess the tenants, under the notification of 1877, and the only way in which we can carefully claim an enhanced rental is by conforming to the provisions of section 86 Land Revenue Code.

The case of Mr. Surappa is closely analogous to the case on hand judgment in thiscase is not yet pronounced, I shall of course keep you ---- informed of it. The records sent are herewith returned."

"Copy"

Muzrai Commissioner. 13/10/24

Muz 4]

SUBJECT ....

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.....

Diary No. of letter replied to _____

Muzrai Secretariat

( )

, *the* *192* .

Section

File No.

Serial No.

No. 359

Our file

Date of issue 30.9.24

To

The Muz. Comr.

Signed by [illegible]

Secy,

Adverting to your letter no C. 161 dt 15.8.24 reporting, in the matter of the conflict between Sec. 14 of the Muz. Regn with the terms of the Ch. Comrs. Notification of 1877. that the time has arrived to legislate in the matter bringing to

over.

The intention of Govt
that the notification of
1879 has to prevail
in such cases, I am
directed to state that
necessary action will be
taken in the matter
in connection with the new
Mezrai Bill which is
(illegible) under the consideration
of Govt.
(2) The records are
returned.

I have etc.

30 8/11

(illegible) for Sec. Secretary

(illegible)
8/8/11

List of enclosures

Copied by

Examined by

WD 0563—GPB—2,500—27 7 22